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WHAT IS THE COMMON GOOD, AND WHY DOES IT CONCERN THE CLIENT'S LAWYER?

JOHN FINNIS*

Why is anything of real concern to any of us? Because, besides our simply emotional motives, we have reasons for action (which may be supported or opposed by our emotions). What are reasons for action? Some are instrumental, means to further ends: I have reason to start reading this paper to you, and you had reason to come back into the room to hear it. What reasons? Well, doing so is my contribution to this symposium's reflection on its subject-matter. That reflection, in turn, is intended to be instrumental in promoting a wider and deeper understanding of an important set of practical issues about life in interaction with other persons; and perhaps also instrumental in pursuing other ends such as professional qualification or advancement, consolidating the scholarly profile of the College, and/or celebrating—i.e., collectively acknowledging, reflecting on, and reaffirming—75 years of the College's collaborative educational and professional enterprise. And other reasons could easily be identified.

This paper offers some rather fundamental reflections on the common good, in the hope of articulating clearly (albeit very briefly) what seem to me the deepest principles of “legal ethics,” so that their philosophical seriousness, their intrinsic interconnections with each other, and their solid warrant in the face of skeptical doubts can be made a little more apparent than is usually attempted. It seeks to illuminate the senses in which the rules of professional conduct are, in the words of the introductory statement of the scope of the ABA's *Model Rules*, “rules of reason.”¹ Its consideration of those rules will not, of course, be complete; it will focus mainly on rules concerned with truth and falsity. Even the most pragmatic professionals among us are persons who have, or have had, critical questions about the ultimate worth and good sense of our profession's governing rules and standards.

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1. MODEL RULES OF PROFESSIONAL CONDUCT Preamble (1995).

Just as some reasons—like our own immediate reasons for beginning this session here this afternoon—are merely instrumentally reasons for action, others are rational motives not only instrumentally but also intrinsically. Reasons-for-action of the latter kind are primarily ends rather than means. They make good sense of choice and action even when they are intended or pursued just for their own sake and not as instrumental or a means to anything further. Knowledge or reflective understanding is one such reason; one's pursuit and acquisition of it is understood as a good which sufficiently *explains* why one is acting.

Explanation by pointing to this sort of reason for action is satisfactory even in circumstances where the intrinsic good—the basic reason for action—which explains why the action is being, or was, done does not adequately *justify* the action. “I’m trying to improve my understanding of this, to find out the truth . . .” explains why I’m doing what I’m doing even when I have a responsibility to be doing something else, or when my pursuit of knowledge involves the use of unjust means such as deceiving or injuring experimental subjects. The whole issue of justification arises because there is more than one kind of intrinsic good, and also because each intrinsic good can be actualised or realised—made present or real—in the lives of many people—potentially everyone—besides myself. Besides knowledge or reflective understanding (including perhaps aesthetic appreciation), there are other basic kinds of good—basic reasons for action—such as the life and health of persons, their inner emotional-rational harmony as individuals, their harmonious relationship with each other, and so forth. Our collaboration here and now in maintaining communication by audible reading on my part and quiet attentiveness on yours is certainly an instrumental good—a means to the end of increasing our reflective understanding, even if only by exposing my errors to your refutation—but it is also an intrinsic good, as aspect of the harmonious relationship which we call variously peace, friendship, mutuality, sociability, community, fellowship, and so forth.

So each of the basic forms of human good—each of the intrinsic reasons for action—is, in a sense, a common good: each is in principle good for any and every person, and each has been, is being, and can be participated in, instantiated, actualised, realised in the life of inexhaustibly many persons. But each of these basic human goods is also an aspect of a common good in a related but significantly different sense. For each can be an aspect of the flourishing of a group, a community, big or small, formal or informal, and can be a reason for that community or group to act in the way that groups do:

by the more or less coordinated conduct which their members choose to engage in for the sake of some purpose shared with the other members of the group.

So there is a common good of this law school, and of this symposium, and even of this assembly-session. Its many aspects can be easily understood by considering the many ways in which it can be impaired or violated. There is a set of physical conditions to be maintained—such as fresh air and light—which impact on the health and the inner harmony (for example, freedom from distractions) of all of us participants, but there are also aspects of our conduct as individuals who can each cooperate with or disrupt the harmony between each of us and the rest: not speaking too softly or quickly or interminably; not interrupting with belches, televised baseball commentaries, or irrelevant questions, and so forth. Failure to respect those conditions of conduct is morally significant—in one way or another unfair. And there are other moral components of the common good. The common good of this conference and even of this session is impaired if some of you are people who have usurped the places of those who had priority because they made a reservation and arrived in due time but were supplanted (say, by those of you who—let us imagine—simply walked in off the street because you felt like it, or by reporters who have no interest in the conference topic but are—let us imagine—covering the notorious private life of one of the speakers). So the shared purpose which is the defining component in the common good of our group (be it big or small) includes, or is inevitably accompanied by, the shared purpose that in pursuing our primary, substantive shared purpose or purposes, we shall do so in a way that is mutually respectful, decent, fair. As the saying has it, even a gang of thieves is benefited by “honour among” its members.

As that saying also suggests, what is for the common good of one group may be bad for other groups, such as the families and businesses destroyed by the Mob, and the wider community injured by such crimes committed in its midst. The kinds and instances of common good that concern each of us include—to mention only the most stable, long-term examples—the common good of one’s family, of one’s firm, one’s profession, one’s state and nation, and in some way the whole of humankind.

So the idea of the common good has its place not as a way of referring to some state of affairs, present or future. There is no privileged time at which to assess an all-inclusive common good; there is no privileged horizon or group in terms of whose flourishing one might rationally measure the overall common good; nor is there any

one good among the basic human goods which is the appropriate single rational measure of overall net common good. Instead, the idea of common good functions as an indispensable directive element in the *practical thinking* by which one deliberates towards choice and rational action.

When one's practical thinking is fully rational—that is to say, when one's emotions support rather than deflect or suppress the full directiveness of each and all of the basic reasons for action—it is moral thinking. For, as I suggested by pointing to the first sense of "common good," the basic reasons for action each direct me towards goods which are *good for you* or anyone else just as they are *good for me*; they do not come with the label "... for John Finnis" (or any other individual in preference to others). So the flourishing towards which the basic reasons for action direct us is nothing less than the good of all persons and communities—we could call it "integral human fulfillment." Integral human fulfillment, too, is not a state of affairs towards which we might devise some Million-year Plan; as I have just said, there is no privileged moment or end-state in relation to which we might rationally intend or hope to draw up the profit and loss account for the whole of humanity, and utilitarian or consequentialist talk guiding deliberation by reference to the greatest good of the greatest number, overall, net and "in the long run" (run to where?) is as unreasonable as would-be mathematical talk of the largest whole number. Rather, integral human fulfillment is (so to say) an ideal, a lodestar in practical thinking. It is the counterpart, the flipside, of the idea of practical reason's integral directiveness. That integral directiveness is unreasonably cut back, deflected, or suppressed when one allows one's emotions to impair one's deliberations in any of the ways we are familiar with as basic kinds of immorality. Indeed, the philosophical analysis of morality or ethics has made it clear that the master principle of morality, which religious ethics formulates in terms of love of one's neighbour as oneself, should for philosophical purposes be formulated rather in the following terms (substantially similar in content): In voluntarily acting for human goods and avoiding what is opposed to them, one ought to choose and otherwise will those and only those possibilities whose willing is compatible with a will toward integral human fulfillment.²

The emotions of hatred and vengefulness, for example, are incompatible with such a will insofar as they motivate one towards

2. See JOHN FINNIS, *AQUINAS: MORAL, POLITICAL, AND LEGAL THEORY* 126-29 (1998).

choosing harm—the destruction of some human good such as life or health—for its own sake, as a kind of end. The emotions of self-preference are incompatible with openness to integral human fulfillment insofar as they motivate one towards choices which are selfish or unfairly biased for or against some group on grounds other than a reasonable priority of responsibilities. (Egoism is not the natural or “default” state of practical rationality, from which we have to be dragged or seduced by morality or religion or social pressure or suchlike; rather, egoistic “prudence” is a stunting of reason’s—reasons’—directiveness, of practical reasonableness, a stunting which results from an option to set aside or arbitrarily limit rationality and human flourishing.)³

So we are fully reasonable insofar as our willing is compatible with a will open to integral human fulfillment, the flourishing of all human persons and communities (present and future) in all the basic human goods to which we are directed by the basic reasons for action. And one has such a will insofar as one (a) excludes every choice intentionally (i.e., as end or as means—not merely as a side-effect) to destroy or damage any basic good in any person, and (b) fulfills one’s many and varied responsibilities to respect and promote the common good of one’s family, of one’s firm and/or profession or other vocational associations, of one’s political communities (state or states), and of each of the morally acceptable friendships, partnerships, trusts, and other more or less voluntary associations and collaborative undertakings into which one enters. Moral principles and norms are accordingly of two broad kinds: (a) negative principles or norms which exceptionlessly exclude any choice intentionally to destroy or damage any basic good in any person, and (b) principles and derivative norms identifying one’s positive responsibilities to respect and in proper cases intend and promote the common good of each of the many kinds of community, lasting or temporary, which I have just listed.

The Golden Rule of fairness—do to and for others what, and only what, you would want or be willing for them to do to or for you—is an element (doubtless the primary element) in, or perhaps immediately derivative from, the master principle of love of neighbour as oneself. (As I indicated earlier, the neighbour principle is the formulation which our civilization has appropriately adopted for conveying the content of the more abstract and philosophically articulated principle of openness to practical reason’s integral

3. *See id.* at 111–17.

directiveness, i.e., to integral human fulfillment.) So respect for the common good of any community or group always involves, *first* of all, respect for oneself.

And right here we find the primary and most far-reaching reason why lying is in all circumstances morally excluded (though it is not the reason for the gravity of those lies that are gravely wrong). One lies if and only if one asserts a proposition as true, believing it to be false, and thus communicating *something about oneself*—‘I believe this to be the case’—which is false even if the proposition asserted happens, contrary to one’s belief, to be true.⁴ Since every act of asserting is thus purportedly self-disclosing, the choice to lie is the choice precisely of *duplicity*, the creating and projecting of a phony self while actually remaining hidden behind the pretended self-disclosure. What purports to be a relating of mind to mind and thus of person to person—the relationship whereby self discloses self to another as part of a common (shared) concern with a certain matter—is in reality made to be not that relationship at all but the duplicitous presentation to another person of a pretended mind and heart. In every act of lying one intentionally divides oneself into the counterfeit self, fabricated externally by the false asserting, and one’s true self hidden interiorly behind the deceptive self-disclosure. The division is profoundly disrespectful to oneself. By projecting the false self into other people’s deliberations and interactions, it implicitly, willy-nilly, denies the basis on which one is entitled to one’s reputation, indeed the basis on which one is entitled to be treated as the person one is and not as some personality *constructed* by hostile or indifferent people. So, even in those cases where a lie does no direct injustice to anyone (because it is told to someone who has no right to be informed of the truth), the option to lie should be excluded from one’s choice and action not least because such choices are subtly but really opposed to the common good—i.e., to the common good of each of the

4. The terms “assert” (with its cognates) and “proposition” are critically important here. Many statements, even when in the indicative tense, are not assertions but rather, in the context, quotations or other reports, or dramatic renderings (stage-performance), or statements of a hypothesis. (Conversely, assertions can be made by e.g. a nod or even, given a certain context, by silence.) And what *proposition* is asserted by a statement may depend not only on the words and structure of the statement but also on the context. See the comment on the Comment to American Bar Association, MODEL RULES OF PROFESSIONAL CONDUCT Rule 4.1(a) (Truthfulness in Statements to Others) (“[a] lawyer shall not knowingly make a false statement of material fact or law to a third person”) in 3 GERMAIN GRIZEZ, THE WAY OF THE LORD JESUS: DIFFICULT MORAL QUESTIONS 796-97 (1996).

communities, overlapping and interacting, in which one is involved.⁵ And this is true, in one way or another, of all “conduct involving dishonesty, fraud, deceit or misrepresentation,”⁶ each of these being conduct of a kind which will have its intended effect just insofar as it is understood by its victims on the model of the straightforward, paradigmatic lie: the explicit assertion of a proposition believed by the speaker to be false.

So, respect for the common good of any group or community requires of its members that they have respect for themselves, for their true interests as persons. That first component in respect for the common good is also foundational for the *second*: respect for others and their rights, for each other member and all their rights. Rights are not merely instrumental to the common good. Rights, and their recognition in thought, word, and action, are intrinsic components in the common good. For, to speak of A’s right is to speak of B’s duty (perhaps also of C’s and D’s and even everybody else’s duty) and of thus of a relationship between A and B (and perhaps also C and D and even everybody else), a relationship defined by concern for some specific aspect of A’s individual well-being, A’s good. (And normally what is true of A is true of B, for their rights and duties are reciprocal.) Such relationships are among the most significant and extensive of A’s assets, and are part and parcel of the well-being of every community which A belongs to and which is in any way concerned with the subject-matter of the right and relationship in question.

Some of A’s rights are “human rights,” constituted by reasons for action which are intrinsic to the human situation: the right, for example, not to be deprived of one’s liberty or reputation by lies. Lies are often denials or violations of rights, whether the lie be malicious (chosen for the sake of harming) or simply deliberate (chosen as means to some other, perhaps itself quite worthy, end). Such violations of A’s rights are doubtless the most common way in which lying and other deception should be judged not merely wrong but seriously wrong. The right not to be defeated in litigation by the lies of witnesses or other parties or their legal representatives is a human right, not simply the product of some specific legal system’s positng. Perjury is a human rights abuse, and it is similarly a violation of human rights for a lawyer to “knowingly make a false statement of

5. See FINNIS, *supra* note 2, at 154–63.

6. MODEL RULES OF PROFESSIONAL CONDUCT Rule 8.4(c) (1995) (Maintaining the Integrity of the Profession: Misconduct).

material fact or law to a tribunal" or "knowingly offer evidence that the lawyer knows to be false."⁷ Since, as I said, respect for rights is an inherent and basic component of the common good, the inherent wrongness of this sort of conduct is one of the most fundamental ways in which the common good concerns the client's lawyer.

I have mentioned self-respect and respect for rights as ways in which the common good is to be respected. A *third* way is respect for the conditions of cooperation. There is no need to labour here the countless ways in which the common good depends upon, and calls for, cooperation between some or all of a group's members. It is obvious, for example, that we need to cooperate with each other in maintaining a political community of the kind we call a state, with the capacity to deal with the vast range of violations of right which we call crimes. And:

To deal with crimes and allegations of crimes, [the citizens of a state] need a criminal process in which truth is brought to light and justice achieved through the conscientious cooperation of the various participants—jury, judge, prosecutor, witnesses, and defense counsel. To the extent that participants do not fulfill their assigned roles, they deprive their fellow citizens of the just process society needs.⁸

Here Grisez takes for granted, of course, that the state has adopted the adversarial system of criminal justice. I have no brief for alternative systems, and this is not the place to argue their merits and demerits. Suffice it that the adversarial system as we know it is perhaps not simply required by reason, but is rather adopted by a choice which could reasonably have been different. It is thus a matter of "purely positive law."⁹ But, to say the least, it is a reasonable choice, and once it has been made, respect for this system of fair cooperation is required by the common good. Respect for the adopted system is required of every participant. If the rules of the system require paid advocates to be professionally qualified, violation of those rules injures the common good—for, relying on the rule, judges conduct their adjudication in the faith that the advocates will be acting with professional restraints and to professional standards of competence. So the lies of someone who falsely represents himself as professionally qualified are opposed to the common good.¹⁰ For

7. *Id.* Rules 3.3(a)(1), (4).

8. GRIZEZ, *supra* note 4, at 761.

9. See John Finnis, *The Truth in Legal Positivism in THE AUTONOMY OF LAW: ESSAYS ON LEGAL POSITIVISM* 195–214 (Robert P. George ed., 1996).

10. See MODEL RULES OF PROFESSIONAL CONDUCT Rule 8 (1995) (Maintaining the

similar reasons, given the system and its rules—which are reasonable even though they could reasonably have been different—it is not merely a violation of a rule but also disrespectful of the common good for a lawyer knowingly to “fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel.”¹¹

Notice that the common good of more than one community is violated, or capable of being violated, by such conduct in breach of the rules of professional conduct. When we hear the phrase “the common good” we tend to think immediately of the common good of a political community of the kind we call “state” (e.g., the state known as the United States of America). And that is reasonable enough, given that the common good of many smaller communities would be greatly impaired if there were not a community of the political, state kind to perform efficiently those functions which can be carried out only inefficiently, if at all, by smaller communities which with their members coexist and interact with each other. The one function for which we most indispensably need states and their laws is the administration of civil and criminal justice. (It is a far-reaching function, of far-reaching importance, as we can see when we observe the collapse of state authority, and with it economic life—say, in the Russian Republic today.) But, as I have been indicating and illustrating from near the beginning of this paper, there is indeed a common good of countless other groups, and in each case that common good should be respected and (as appropriate in that member’s circumstances) promoted by each member of the group insofar as the group’s defining purpose or range of purposes is compatible with justice, including the just claims of the state’s laws and the legitimate interests of persons and groups inside and outside the group in question. One of these groups subordinate to, but not creatures of, the state’s government and laws is the legal profession itself. Another is the lawyer’s own firm or partnership, if any. Another is the limited and temporary group constituted by the parties to litigation (including the judge) or to a contract or even, looser and less extensive in mutual commitment, a precontractual negotiation.

Integrity of the Profession): “8.1 An applicant for admission to the bar . . . shall not (a) knowingly make a false statement of material fact; or (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter”

11. *Id.* Rule 3.3(a)(3). Insofar as the rule is in force and generally respected, judges need not employ staff to undertake the basic legal searches for perhaps uncited relevant law in order to fulfil their obligation, as judges, to do justice according to law.

And another is the lawyer-client relationship itself (which may or, as at the English bar, may not have contractual foundations or elements).

One's duty affirmatively to promote the common good of one's decent communities is real enough, but typically it neither is as stringent as one's negative duty to respect it (not violate it), nor does it amount to a responsibility for *coordinating* the conduct of many persons for that common good, the responsibility of leaders, rulers, governors, directors. It is one thing to respect the common good of the parties to litigation by not cheating on discovery and not contriving delays by applications known to be groundless. It is quite another thing to hold oneself responsible for securing litigation's proper outcome—a judgment in line with law, truth, and justice—by taking on the role of the litigation's director, the judge, forming one's own judgment about the truth of the story one's client asserts¹²—or about the negative effects likely to result, for one's client or for others or for "society's best interests," if one's client prevails—and, on the basis of that private judgment, declining to make submissions which could properly be made to put one's client's own case before the court—could properly be made because they do not include one's making any assertion one does not believe to be true, or assisting one's client to make any assertion one knows—as distinct from suspects—to be false, or failing to admit "any fact that cannot properly be disputed."¹³ Such conduct by an advocate not only deprives the client of a legal entitlement to representation, but as a side-effect damages the common good of the political community by undermining the system of administering civil or criminal justice, a system which achieves its purpose adequately only insofar as each participant plays the role assigned by the system to participants of *that* kind (e.g., as representative of the defendant), as distinct from other kinds (e.g., as witness, master of interlocutory proceedings, judge, or jury).¹⁴

12. Of course, making such a judgment may be perfectly proper and indeed is required of one for other purposes, e.g., to determine whether one is assisting a client in conduct one "knows is . . . fraudulent." *See id.* 1.2(d).

13. *See id.* Rule 1.6 cmt. ("Authorized Disclosure").

14. *See* GRISEZ, *supra* note 4, at 761: speaking of a carefully described case in which counsel (1) suspects that his client's story is not true, (2) believes that the client's best interests would be served by being convicted and placed on a regime of compulsory medication, and (3) is therefore contemplating not calling a witness who would testify in support of the client's story, Grisez (addressing this advocate) says, *inter alia*:

As a defense attorney you have undertaken to serve, not as the steward of society's best interests or even of your client's best interests in general, but

Conversely, the judge is responsible not for each step in the proceedings but rather for coordinating those steps so that they move towards the instantiating, in those proceedings, of the good (the common good) common to all proper legal proceedings: the doing of justice according to law and truth—an instantiation which is to be accomplished with at least provisional finality in the judge's judgment.

All of us who have been advocates, or have been in close professional attendance on advocates, know about the emotional pressure—sometimes reinforced by genuine reasons—to set aside the fine distinctions demanded by the rules of professional conduct (for the common good) and to assist the client in the devising and presentation of false testimony. These pressures are comparably intense in certain phases of legal advising even independently of advocacy.¹⁵ At the heart of the experienced difficulty is the service one's mind can give one's emotions, by generating a rationalisation in which one's true self, and one's real relationship to one's client, a self which actually has responsibilities for, and a relationship which takes its place within, a network of overlapping common goods—of one's firm and/or profession, one's family, one's state—are replaced by a horizon constructed by one's rationalising under emotion's mastery. This horizon is demarcated by the immediately evident interests of the client, interests which are then used to construct a spurious “calculus” of “what is for the best for *everyone*, overall and in the long run.” This sort of oscillation between the arbitrarily demarcated and unilaterally prioritised goal of victory in the instant proceedings and an imaginary “greatest good of the greatest number”¹⁶ is characteristic

as the advocate of his legitimate objective in a particular legal process [H]e is entitled to representation by a lawyer who will zealously protect his rights and win his acquittal unless the state really can overcome the presumption that he is innocent. Therefore, in failing to seek an acquittal [in a case where you have no way of knowing he is lying or mistaken], you would violate his right to present his case. In short, you would betray and defraud your client if you abandoned your role as his legal advocate and assumed a different one: that of arbitrator of his and society's best interests. Further, abandoning your role would injure the common good of the citizens of your state. To deal with crimes and allegations of crimes, they need a criminal process in which truth is brought to light and justice achieved through the conscientious cooperation of the various participants—jury, judge, prosecutor, witnesses and defense counsel. To the extent that participants do not fulfill their assigned roles, they deprive their fellow citizens of the just process society needs.

Id.

15. See the illuminating discussion in GRIEZ, *supra* note 4, at 776–79 (Q. 181: “May lawyers lead clients to make possibly untruthful statements?”).

16. A dictum of M. Lewinsky to L. Tripp captures this oscillation well, whatever the

of deliberations which result in choices of professional and other wrongdoing. Discerning its inadequacy as reasoning involves taking into consideration the multiple relationships between action and common good which I have tried to sketch, in barest outline, in this paper.

Let me finally turn to the set of questions set out in the organisers' invitation to the symposium and in their brochure for participants. Here are some answers—framed quite abruptly, lest I repeat everything I've already said.

"Do lawyers have a duty to promote the common good? If so, what is meant by this duty?" Yes, they have such a duty, though the primary way in which they fulfill it is by promoting the true and proper interests and legal rights of the individual or particular client, in accordance with law and the rules of professional conduct. For intrinsic to the common good is the public interest in the upholding of private rights. By and large the lawyer does not have responsibility for coordinating action for—and in that direct way promoting—the common good.

"Is the duty moral, professional, or legal?" Since it is legal and professional, it is moral. Since it is moral, it is in large measure, though not exclusively or exhaustively, articulated and supplemented by professional and legal rules.

"Even if such a duty exists, from where does it spring? The humanity of the lawyer, the community of persons, the legal system created by the community, the oath of office? The aggregate of individuals' good, or a set of unique human goods that exist only in community, and by communal effort?" It springs from the goodness of being reasonable, and from the reasons for respecting and promoting all the basic human goods in all human beings. Thus, it is required by lawyers' respect for their own individual humanity, for the communities of persons who instantiate these goods and can do so more fully and reasonably if they create and maintain a reasonable legal system. If there is an oath of office taken by lawyers, its point is

accuracy of her allegation or speculation about the particular person under discussion:

Ms. Lewinsky: If—if—if I said, if somebody said to him, "Is Monica lying under oath," he would say yes. But when he on his own thinks about it, he doesn't think about it in those terms. Okay?

Ms. Tripp: Probably.

Ms. Lewinsky: Okay? He thinks of it as, "We're safe. We're being smart."

Okay? "*We're being smart, we're being safe, it's good for everybody.*"

Kenneth W. Starr, Report of the Independent Counsel referred to the United States House of Representatives (Sept. 11, 1998) <<http://www.house.gov/judiciary/6narrit.htm#L16>> (emphasis added).

to articulate the lawyer's commitment to make decent legal reasoning an integral part of personal deliberation, choice, and action. The common good cannot be satisfactorily explained as an aggregate of individuals' good or of anything else; its place in guiding reasonable deliberation cannot be captured by any kind of aggregation, for basic goods are incommensurable and even the instantiation of one basic good in the lives of many persons is not to be pursued on the basis that more of that good is simply better. On the other hand, the common good of a group is not a set of goods that exist only in community, but extends to goods that can be cultivated even by Robinson Crusoe alone on his island without hope of rescue, or by one brave person against a united communal effort.

"How does a legal system contribute to the common good? Maintenance of order so that individuals can pursue their private visions of good, restoration of communal bonds sundered by individual acts causing harm to others, communal insistence that each is given his or her due?" Yes, in each and all of these ways.

"Who determines what acts contribute to or detract from the common good? The community, the individual acting as client, the individual acting as lawyer?" Yes; the community's representatives, and every individual privately or professionally involved, each and all have, in differing ways and with differing authority and weight, responsibility for making and acting upon judgments about what is for the common good of this or that partnership, family, firm, professional association, *lis inter partes* (legal proceeding), and state.

"How do lawyers best promote the common good? By providing strictly partisan representation of clients, by exercising independent judgment in determining the objectives of representation, or by ensuring that clients conform to communal norms embodied in laws and statutes?" By zealous representation compatible with rules and principles articulating what is and determining what is to be the role of "an officer of the legal system," a "public citizen having special responsibility for the quality of justice" and "a member of a learned profession."¹⁷ There is to be independent judgment by the lawyer about the objectives of representation, but only so as to exclude assistance in crime or fraud. There is no general duty of the lawyer to ensure that clients conform to communal norms, or even to common law or statute, but there is a stringent duty not to assist in crime or fraud or in any kind of misconduct in legal proceedings with which the lawyer is professionally concerned.

17. See MODEL RULES OF PROFESSIONAL CONDUCT Preamble (1995).

